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10 *Attorneys for Plaintiff*

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DOMENICO D’CARPIO, Individually
14 and On Behalf of all Others Similarly
15 Situated,

16 Plaintiffs,

17 v.

18 SELDAT, INC., and SELDAT
19 DISTRIBUTION, INC.,

20 Defendants.

Case No. 2:19-cv-00174-JLS-RAO

Assigned for All Purposes To:

Hon. Josephine L. Staton

Courtroom 10A, 10th Fl.

**JOINT STIPULATION FOR
VOLUNTARY DISMISSAL
WITHOUT PREJUDICE PURSUANT
TO FED. R. CIV. P. 41(a)(1)(A)(ii)**

Complaint Filed: January 8, 2019

Amended Complaint Filed: July 2, 2019

Trial Date: None

1 Plaintiff Domenico D’Carpio (“Plaintiff”), and Defendants Seldat, Inc., and
2 Seldat Distribution, Inc. (collectively “Defendants” and collectively with Plaintiff, the
3 “Parties”), by and through their undersigned counsel of record, respectfully submit this
4 Joint Stipulation for Voluntary Dismissal Without Prejudice of this action, under Fed.
5 R. Civ. P. 41(a)(1)(A)(ii). The Parties hereby agree and stipulate to the following:
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7
8 WHEREAS, on January 8, 2019, Plaintiff brought this action styled *Domenico*
9 *D’Carpio v. Seldat Inc.*, Case No. 2:19-cv-00174-JLS-RAO (the “Action”) as a
10 collective action under § 216(b) of the Federal Fair Labor and Standards Act, 29 U.S.C.
11 § 201 *et seq.* (“FLSA”), and as a class action under Fed. R. Civ. P. 23 (“Rule 23”) (the
12 “Complaint”) (Doc. 1), asserting the following causes of action against Defendant
13 Seldat, Inc.: (1) Failure to Pay Wages Under the FLSA; (2) Failure to Pay Wages and
14 Overtime Under Cal. Lab. Code §§ 510 and 1194; (3) Meal-Break and Rest-Break
15 Liability Under Cal. Lab. Code §§ 226.7 and 512; (4) Violation of Cal. Lab. Code §
16 203; (5) Violation of Cal. Lab. Code § 226(a); and, (6) Violation of Cal. Bus. & Prof.
17 Code § 17200 *et seq.*;
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21 WHEREAS, Plaintiff brought his FLSA claims in this Action on behalf of a
22 proposed collective of similarly situated security guards, classified as independent
23 contractors, that have worked or currently work for Defendants within the three years
24 prior to the filing of the Complaint. Plaintiff brought his Rule 23 claims in this Action
25 on behalf of a proposed class of similarly situated security guards, classified as
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1 independent contractors, that have worked or currently work for Defendants in the state
2 of California. *See* (Docs. 1, 22);

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4 WHEREAS, on January 9, 2019, this Action was assigned to this honorable
5 Court. (Doc. 5);

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7 WHEREAS, on February 7, 2019, Defendant Seldat, Inc. answered the
8 Complaint. (Doc. 10);

9
10 WHEREAS, on March 21, 2019, the Parties submitted a Joint Rule 26(f) Report.
11 (Doc. 13.) On April 3, 2019, after reviewing the Parties' Joint Rule 26(f) Report, the
12 Court entered a scheduling order setting forth a Rule 23 class certification briefing
13 schedule and providing that a motion for conditional certification was to be filed as
14 soon as practicable. (Doc. 14);

15
16 WHEREAS, on or about April 17, 2019, Plaintiff submitted a Private Attorney
17 General Act ("PAGA") Notice Letter to the Labor and Workforce Development
18 Agency ("PAGA Notice Letter"), which described: (i) the facts and theories supporting
19 Plaintiff's allegations concerning Defendants' violations of the Labor Code and IWC
20 Wage Order; and, (ii) Plaintiff's intent to recover penalties based on the violations set
21 forth therein. On the same date, Plaintiff also served the same PAGA Notice Letter on
22 Defendants by certified mail;

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25 WHEREAS, on June 4, 2019, Plaintiff filed a motion and supporting documents
26 requesting leave to amend the Complaint to add Seldat Distribution, Inc. as a defendant.
27 (Docs. 17, 18.) On June 14, 2019, Defendants filed a notice of non-opposition to
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1 Plaintiff's motion for leave to amend the Complaint. (Doc. 19.) On June 20, 2019,
2 Plaintiff filed a reply in support of the motion for leave to amend the Complaint. (Doc.
3 20);
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5 WHEREAS, on July 1, 2019, the Court entered an order granting Plaintiff's
6 motion for leave to amend the Complaint. (Doc. 21);
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8 WHEREAS, on July 2, 2019, Plaintiff filed a first amended complaint in this
9 Action, which added Seldat Distribution, Inc. as a defendant. (Doc. 22.) On August
10 30, 2019, Defendants answered the first amended complaint. (Doc. 35);
11

12 WHEREAS, on June 28, 2019, Plaintiff initiated a lawsuit against Defendants
13 and Does 1 through 25, inclusive, in Los Angeles Superior Court, alleging unlawful
14 labor practices in violation of PAGA and seeking penalties under PAGA for violations
15 of Cal. Lab. Code §§ 201, 202, 203, 226, 226.7, and 512 *et seq.*, on his behalf and on
16 behalf of all aggrieved employees that were employed by Defendants in the state of
17 California as security guards classified as independent contractors (the "State
18 Complaint" or "State Action"). On August 13, 2019, the State Action was assigned for
19 all purposes to the Honorable Richard J. Burdge, Jr., Department 37 at the Stanley
20 Mosk Courthouse. On August 30, 2019, Defendants filed their answer to the State
21 Complaint;
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25 WHEREAS, the Parties have been meeting and conferring and have agreed that
26 Plaintiff may file an amended complaint in the State Action to add the Rule 23 claims
27 asserted in this Action;
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1 WHEREAS, the Parties are in agreement that in order to avoid unnecessary
2 motion practice and in the interest of judicial efficiency and economy, the Parties will
3 stipulate to dismiss Plaintiff's claims in this Action without prejudice, subject to the
4 Court's approval. As there has been no FLSA collective certified and no other putative
5 Collective members have opted-into the Action, the dismissal of Plaintiff's FLSA
6 claims will not prejudice Defendants or any putative Collective members. Similarly, as
7 there has been no certification of a Rule 23 class, and in light of the Parties' agreement
8 that Plaintiff will amend the State Complaint to add the Rule 23 claims asserted in this
9 Action, dismissal of the Rule 23 class claims in this Action will not prejudice
10 Defendants or any putative class members;
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12 WHEREAS, the Parties agree that no payment was made to Plaintiff or his
13 counsel in exchange for the dismissal of Plaintiff's claims in this Action;
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15 WHEREAS, the Parties agree that each party shall bear its own costs and
16 attorney's fees associated with Plaintiff's claims in this Action;
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18 THEREFORE, the Parties stipulate to voluntarily dismiss this Action in its
19 entirety without prejudice and respectfully request that the Court enter the concurrently
20 filed [Proposed] Order to that end.
21

22 IT IS SO STIPULATED.
23

24 Plaintiff's undersigned counsel attests that all other signatories listed, and on
25 whose behalf this filing is submitted, concur in the document's content and have
26 authorized the filing.
27
28

1 Dated: October 22, 2019

GLANCY PRONGAY & MURRAY LLP

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9 *Attorneys for Plaintiff*

10
11 Dated: October 22, 2019

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25 *Attorneys for Defendants*

ATTESTATION

I, Kevin F. Ruf, am the ECF user whose identification and password are being used to file this document. In compliance with Local Rule 5-4.3.4, I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: October 22, 2019

s/ Kevin F. Ruf

Kevin F. Ruf

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On October 22, 2019, I served true and correct copies of the following document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 22, 2019, at Los Angeles, California.

s/ Kevin F. Ruf
Kevin F. Ruf